IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1944

No......

TRUSTEES OF THE INTERNAL IMPROVEMENT FUND OF THE STATE OF FLORIDA, and THE STATE OF FLORIDA, et al.,

Petitioners,

vs.

SOUTHWEST TAMPA STORM SEWER DRAINAGE DISTRICT, and RECONSTRUCTION FINANCE CORPORATION,

Respondents.

BRIEF IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS, FIFTH CIRCUIT.

TO THE HONORABLE CHIEF JUSTICE AND THE ASSOCIATE JUSTICES OF THE SUPREME COURT OF THE UNITED STATES OF AMERICA:

I.

THE OPINION

The petitioner herein by a petition for a Writ of Certiorari seeks a review of a judgment and opinion of the United States Circuit Court of Appeals for the Fifth Judicial Circuit, which judgment and opinion is found in the record, pages 150 to 155; copy of the opinion is attached to the Appendix attached to this brief as "Exhibit A". The said judgment and opinion is an affirmance of judgments and opinions of the United States District Court for the Southern District of Florida in this cause, which are set out in the record at pages 90 to 93; 104; 112 to 115, and 115 to 127, and are not reported.

II.

STATEMENT OF GROUNDS UPON WHICH THE JURISDICTION OF THE SUPREME COURT OF THE UNITED STATES IS INVOLVED.

This statement is set out in the preceding petition under III, which is hereby adopted and made a part of this brief by reference.

III.

STATEMENT OF THE CASE.

A concise statement of the case containing all that is material to the consideration of the questions presented, is set out in the preceding Petition under I, which is hereby adopted and made a part of this brief by reference.

IV.

SPECIFICATION OF ERROR INTENDED TO BE URGED.

This specification is set out in the preceding petition under IV, which is hereby adopted and made a part of this brief by reference.

V.

ARGUMENT.

Summary of Argument.

Point 1. In a condemnation suit brought by the United States of America to condemn State lands, the prosecution in such suit of a claim by the drainage district for the satisfaction of a drainage tax lien upon such State lands, and the payment of such tax lien out of the funds deposited in Court for the taking of said lands, constitutes an unauthorized suit by the drainage district against the Sovereign State of Florida.

Point 2. The lien of the drainage district for its assessments was inferior and subject to the lien of the State for State and County taxes and such drainage liens were extinguished when the fee simple title to the lands in question vested in the State under the provisions of the Murphy Act.

Point 3. The lien of the drainage district for its assessments against lands is inferior to the lien held by the State of Florida for State and County taxes levied against the same lands.

Point 1.

In a condemnation suit brought by the United States of America to condemn State lands, the prosecution in such suit of a claim by the drainage district for the satisfaction of a drainage tax lien upon such State lands, and the payment of such tax lien out of the funds deposited in Court for the taking of said lands, constitutes an unauthorized suit by the drainage district against the Sovereign State of Florida.

Suit against the state, want of jurisdiction.—Before considering the case upon its merits, we wish to suggest want of jurisdiction, in the district court and in the United States Circuit Court of Appeals, Fifth Circuit, to entertain and adjudicate the issues made by and between the claim of the State of Florida and the claim of the drainage district, as to the Murphy act lands. The state has, in no way, given its consent to such proceeding; and in effect made objection thereto in the district court (see paragraph f. g. h. k. m. and n, of petition for rehearing, pages 95, 96 and 97 of transcript). "It is a settled rule that a sovereign state cannot be sued without its consent. This is true whether the issue is raised by direct suit or otherwise" (Danford vs United States, 102 Fed 2nd. 5, text 8, citing Nassau Smelting & Refining Works vs. U. S., 266 U. S. 1, 107, 45 S. Ct. 25, 69 L. Ed. 190; Illinois Central R. Co. vs. Public Utilities Comm., 245 U. S. 493, 38 S. Ct. 170, 62 L. Ed. 425; Davis vs. O'Hara, 266 U. S. 314, 45 S. Ct. 104, 69 L. Ed. 303; Bigby vs. U. S. 188 U. S. 400, 401, 23 S. Ct. 468, 47 L. Ed. 519; North Dakota-Montana W. G. Ass'n. vs. United States, 66 Fed. 2nd. 573, 92 A. L. R. 1484). The above case of Danford vs. United States

was appealed to the United States Supreme Court, however the above principle of law therein enumerated was not disturbed on appeal (308 U. S. 271, 60 S. Ct. 231, 84 L. Ed. 240). "A sovereign may not be sued without its consent even in cases arising under the laws of the United States" (Cooper vs. Westchester County, 39 Fed. Sup. 58, citing Cargile vs. New York Trust Co., 67 Fed. 2nd. 585, in which certiorari was denied in 292 U. S. 625, 54 S. Ct. 630, 79 L. Ed. 148). "Consent alone gives jurisdiction to adjudge against a sovereign. Absent that consent, the attempted exercise of judicial power is void. The failure of officials to seek review cannot give force to this exercise of judicial power. Public policy forbids the suit unless consent is given, as clearly as public policy makes jurisdiction exclusive by declaration of the legislative body" (United States vs. U. S. Fidelity & Guaranty Company, 309 U. S. 506, 84 L. Ed. 895, text 899). "The immunity of the state from suit can only be waived by the legislature, and it is in no manner bound or estopped by the acts of its officers" (Title Guaranty & Surety Company vs. Guernsey, 205 Fed. 74; in this case a cross bill had been filed against the state and the attorney general had filed an answer and interpleaded).

Proceeding on claims a suit.—In this proceeding the state, pursuant to process issued out of the district court, filed its claim for the compensation paid or to be paid for the taking of its Murphy act lands within the area condemned (tr. 42-55); and the drainage district, pursuant to like process issued, filed its claim for drainage taxes claimed against the same lands (tr. 25-42, 57-62). Replies to such claims were filed by the respective parties (tr. 67-72, 74-76). As appears from the record in this cause,

numerous issues were raised by the pleadings which must be determined by the court if the claims between the parties are to be settled. The state was the owner of the lands and has claimed the proceeds or compensation substituted for the lands taken; the drainage district has filed claims based upon liens against this fund and to that extent is prosecuting a demand against the state in a court of justice. The drainage liens existing against the Murphy act lands taken could not have been enforced had the title to such lands remained in the state (Prince-Hall Masonic Building Association vs. City of Jacksonville, 149 Fla. 109, 6 So. 2nd. 250). Under the laws of this state, the state may not be sued except by consent given by its legislature (Prince-Hall Masonic Building Association vs. City of Jacksonville, supra; Southern Drainage District vs. State, 93 Fla. 673, 112 So. 561; Hampton vs. State Board of Education, 90 Fla. 88, 105 So. 323, 42 A. L. R. 1456). The proceedings between the state and the drainage district, in the condemnation suit, is in the nature of cross or counterclaims between two defendants to the original proceeding; the proceeding to be a suit against the state need not be a direct proceeding but may be in the nature of a counterclaim (United States vs. U. S. Fidelity & Guaranty Company, 309 U. S. 506, 84 L. Ed. 895), cross bill (Title Guaranty & Surety Company vs Guernsey, 205 Fed. 74) or the prosecution, or pursuit, of some claim, demand or request (Missouri vs. Fiske, 290 U. S. 21, 78 L. Ed. 145). In the last cited case (L. Ed. text 150) the Supreme Court said:

> "The proceeding by ancillary and supplemental bill to restrain the State from this exercise of authority is unquestionably a 'suit.' Said Chief Justice

Marshall in Cohen v. Virginia, 6 Wheat. 264, 407, 408, 5 L. Ed. 257, 291, 282, '*What is a suit? We understand it to be the prosecution, or pursuit, of some claim, demand, or request. In law language, it is the prosecution of some demand in a Court of justice* . . . To commence a suit is to demand something by the institution of process in a Court of justice; and to prosecute the suit, is, according to the common acceptation of language, to continue that demand. * * * " (Italics ours).

Award substituted for land taken.—"Where land is taken for a public use, the damages awarded take the place of the land with respect to all rights and interests dependent on and incident to it, and the owners of the property condemned have the same interest in the fund they had in the land taken" (29 C. J. S. 1102, section 196); the award is "subject to all liens which have attached to the several parcels at the time of the entry of the decree of condemnation. The lien status is not changed by the taking of the land by the inherent right in society" (U. S. vs. Certain Parcels of Land in the City of San Diego, 44 Fed. Sup. 937). "As a general rule the holder of a judgment lien or a tax lien on lands taken for the public use has no such interest therein as entitles him to be made a party to the condemnation proceeding or to recover compensation from the condemnor" (29 C. J. S. 1108, section 200), although under proper circumstances the court "may allow the condemnor to pay the award into court for the benefit of the owner and the lienholders, although the lienholders were not made parties to the condemnation proceedings" (29 C. J. S. 1108, section 200). The award in such case is a substitute for the land taken and the lien

is transferred to the award (Dye vs. Schick, 74 Ind. App. 459, 129 N. E. 242). The status of the claims filed as charges or liens against the property taken is to be determined by the law of the state wherein the land taken lies (United States vs. Certain Parcels of Land in San Diego, 44 Fed. Sup. 937; United States vs. Certain Parcels of Land in Prince George's County, 40 Fed. Sup. 436). The federal courts in adjudicating the claim of the drainage district, against the award paid into court for the taking of the Murphy act lands of the state, in legal effect are entertaining a suit for the purpose of fixing a lien against state property which it could not have done had the actual title to the lands remained in the state; the award having been substituted for the lands the title to such award is, for all intents and purposes, in the State of Florida. The claim of the drainage district may not be enforced against the award to any greater extent than it could have been enforced against the lands in the hands of the state. The practice of authorizing the payment of an award in condemnation without providing for the payment of unenforceable tax liens is not novel (Johnson, Collector vs. Revere Building, Inc.,.....Mass....., 177 N. E. 577, 79 A. L. R. 112).

We, therefore, submit that the award paid into court as compensation for the taking of the Murphy act lands in question stands in lieu of the title to the lands taken; that title to such fund is, for all intents and purposes if not actually, in the state; that the district court, when it entertained the proceeding by the drainage district to fix a lien against such award, in legal effect entertained a suit against the state in violation of the 11th amendment to the United States Constitution and of the laws of the

United States and of the State of Florida; and that the award, belonging to the state, should have been paid to the state without regard to the liens and claims against it. The cause should be reversed and the proceedings on the said claims dismissed.

Point 2.

The lien of the drainage district for its assessments was inferior and subject to the lien of the State for State and County taxes and such drainage liens were extinguished when the fee simple title to the lands in question vested in the State under the provisions of the Murphy Act.

The stated proposition relates to liens that may be divided into three classes, to-wit:

1. Liens for state and county taxes existing when the drainage district was formed in 1923;

2. Liens for such taxes assessed and becoming delinquent between the formation of the drainage district and the enactment of the parity act in 1927; and,

3. Liens for such taxes assessed and becoming delinquent subsequent to the effective date of the parity act.

Tax liens existing when district formed.—Let us here consider the first class, last above mentioned, of tax liens, under which tracts numbered 46, 47, 48, 49, 50, 51 and 52 (tr. 43-54), as well as tracts 85B, 87, 108, 109, 112, 114 and 119 (tr. 117-126), became vested in the state pursuant to the said Murphy act. These tax liens were clearly within

the purview of the decision of the Supreme Court of Florida in the case of Sugar Bowl Drainage District vs. Miller, 120 Fla. 436, 162 So. 707. In this case a proceeding had been brought for the purpose of foreclosing "a tax certificate issued August 4, 1919, for the nonpayment of state and county taxes of 1918." The certificates involved in the proceeding were issued prior to the formation of the Sugar Bowl Drainage District. The court (162 So. text 707) stated the following question argued by counsel in that case,

> The first question argued here is whether or not a lien for state and county taxes levied before the formation of the drainage district is superior to the lien for drainage taxes made subsequently against the same lands.

and reached the following conclusion:

> Sugar Bowl Drainage District was incorporated under Chapter 6458, Laws of Florida, Acts 1913, and was amended by Chapter 8902, Sp. Acts 1921. The certificate involved in this litigation accrued in 1919 was prior in time and dignity to accruals for drainage taxes and was not affected by section 1472, Compiled General Laws of 1927. (1927 Parity Act).
>
> The fact that bonds are outstanding against the district in no way militates against this view. The bondholders purchased with knowledge of the law affecting them and may protect themselves by paying the taxes or redeeming the lands at any time before the expiration of the period of redemption. State v. Board of Commissioners of Cascade County, 89 Mont. 37, 296 P. 1.

It is next contended that when Sugar Bowl Drainage District foreclosed and took its master's deed for nonpayment of drainage taxes, the fee to the lands was merged in the title so secured.

Merger has reference to the absorption or extinguishment of one estate or contract into another, generally a lesser estate or right into a greater. A tax lien is said to merge in the ownership of the fee when the state becomes the absolute owner. State v. Locke, 29 N. M. 148, 219 P. 790, 30 A. L. R. 407. But a drainage district can no more acquire the unincumbered fee by foreclosing its drainage tax lien than a mortgagee can do so by foreclosing his mortgage. If appellant's contention be true, then it can acquire title to the lands in the drainage district and relieve them of all other forms of taxation.

Sections 694 and 697, Revised General Statutes of 1920, and sections 893 and 897, Compiled General Laws of 1927, define the classes of property that are subject to and exempt from taxation in this state and the exemptions do not cover lands owned by drainage districts. It is admitted that the lands in question are not used for public purposes.

The decision of the state court upon this question is binding upon this court, as the entire question was one of construction of state statutes (West vs. American Telephone and Telegraph Company, 311 U. S. 223, 61 Sup. Ct. 179, 85 L. Ed. 139, 132 A. L. R. 956 and annotation; Erie Railroad Company vs. Tompkins, 304 U. S. 64, 58 Sup. Ct. 817, 82 L. Ed. 1188, 114 A. L. R. 1487). The case should

be reversed for the purpose of correcting the error made by the district court in its failure to follow the state court's decision, which was binding on it.

Tax liens accruing after formation of district.—We will next consider the second and third classes of tax liens. These include taxes levied and tax sale certificates issued subsequent to the formation of the drainage district and prior to the enactment of the parity act of 1927; and those taxes levied and tax sale certificates issued subsequent to the enactment of the parity act of 1927. The priority between the liens of the drainage assessments and of these two classes of tax liens may depend upon the nature and time of attachment of the drainage assessment lien.

Attachment of drainage liens.—Prior to the adoption of chapter 12040, laws of Florida, acts of 1927, the general drainage statutes, under which the drainage district in question was organized, provided that "all drainage taxes . . . shall, from the date of the assessment thereof until paid, constitute a lien, to which only the lien of the state for general state, county school and road taxes shall be paramount" (section 1, chapter 9129, acts 1923). Chapter 12040 amended the above law so as to provide that such assessment "shall, from the date of the assessment thereof until paid, constitute a lien of equal dignity with the lien for state and county taxes, and other taxes of equal dignity with state and county taxes" (section 2, chapter 12040, acts 1927). The liens under the two acts, although different in priority with state and county taxes, are made to attach "*from the date of the assessment*" of the drainage taxes and continue until such taxes are paid. This requires a determination of the date of the assessment of

the drainage tax; which in turn suggests the following question:

> Did the lien of the assessment for drainage, made by the drainage district, attach when the total assessment was levied in 1924 and 1926, or does it attach annually when the annual installments of the total assessment are placed upon the tax rolls?

This question must be determined from the construction of the general drainage laws in force when the district was formed and the total assessment was made, with subsequent statutes and laws applicable.

The statutes in force when the district was formed, provided that, as soon as the benefits were assessed (section 1110, R. G. S.), the report of such assessment was made and notice thereof given (section 1111, R. G. S.), objections to such report were considered and ruled on by the court (section 1112, R. G. S.) and the "lists of the lands, with assessed benefits and the decree or judgment of the court, have been filed in the office of the clerk of the circuit court, ... the board of supervisors shall, without any unnecessary delay, levy a tax of such portion of said benefits on all lands, in the district to which benefits have been assessed, as may be found necessary . . . . to pay the cost of the completion of the proposed works and improvements . . . . " (section 1114, R. G. S., appendix "B").

As soon as the tax mentioned in section 1114, above, was levied, the secretary of the board of supervisors was required to prepare a list of all the assessments levied, as provided in section 1114, in the form of a well bound book, which is a permanent record in the office of the secre-

tary of the district (section 1114, R. G. S.). After the levying of the assessment, the board of supervisors, each year thereafter, levies the annual installments "of the total taxes levied under the preceding section" (i. e. section 1114, R. G. S.), which annual tax becomes due and collectible at the same time as do state and county taxes. This annual installment of taxes is required to be evidenced by a certificate of the secretary, which certificate is set out in full by the statute (section 1115, R. G. S., appendix "C"); in this certificate reference is made to "the total tax levied under the provisions of section 1114," and the delivery of a certificate, as to said total tax, to the clerk of the circuit court. Section 1119, R. G. S., as amended by chapter 9129, laws of Florida, acts of 1923, provided for the lien of the drainage assessment, and made such lien effective *from the date of the assessment.* In connection with this lien, section 1119, R. G. S., provides the form of certificate to be filed with the clerk of the circuit court. This certificate is set out in chapter 9129, laws of Florida, acts of 1923 (which chapter amended section 1119, R. G. S.), see appendix "D" of this brief. This certificate provides a table showing the "amount of said taxes levied on each tract of land" and recites that the assessment in question "shall be payable in annual installments." This shows an intent to make one total assessment which is payable in installments; and not to make annual assessments.

The assessment record, delivered by the district to the tax assessor annually, is designated as the "drainage tax book" (sections 1115 and 1120, R. G. S.), while the one delivered by the district to the clerk of the circuit court which is delivered only once and not annually, is designated as the "drainage tax record" (section 1119, R. G. S.). The "drainage tax book" is for the purpose of making

collection of the annual installments and not for the purpose of giving notice; while the "drainage tax record" is a permanent record and notice of the lien on the lands. Section 1146, R. G. S., as amended by chapter 9129, laws of Florida, acts of 1923, provides that any person owning lands assessed for drainage taxes under the general drainage laws "shall have the right and privilege of paying such tax assessment" and that "when such tax assessment has been paid" the "drainage tax record" shall be marked "paid in full" after which "such tax assessment shall be deemed satisfied." This statute likewise seems to consider the total assessment as the assesment, and the annual installments as installments of that assessment. The Supreme Court of this state has said that the drainage taxes are "collected in annual installments, each installment being a portion of the total tax levy" (Certain Lands in Putnam County vs. East Palatka Drainage District, 111 Fla. 795, text 796, 149 So. 766; Hallifax Drainage District vs. State, 134 Fla. 471, 185 So. 123, text 127).

The Florida statutes differ from the Missouri statutes mentioned in the case of McAnally vs. Little River Drainage District, 325 Mo. 348, 28 S. W. 2nd. 650, in that the Florida statute provides for a lien "from the date of the assessment" while the Missouri statute provides for a lien "from the date of the filing ~~of the~~ certificate" in the office of the recorder of deeds (Sec. 4399, Rev. St. Mo.).

We, therefore, submit that there is one total assessment of the drainage tax, which is payable either in full or by installments. There is no separate assessment each year in which the annual installment is payable. The total assessment fixes the lien and not the annual installment.

Effect of parity act.—The lien of the assessment being fixed by the total assessment made prior to the effective date of the parity act, the following further question seems applicable,

> If the lien attached as an entire assessment in 1924 and 1926, what was the effect of the parity act of 1927 upon it, if any?

The Supreme Court of Florida has held that a statute is not to be given a retrospective effect unless its terms clearly show that such effect was intended (McCarthy vs. Havis, 23 Fla. 508, 2 So. 819; In re Seven Barrels of Wine, 79 Fla. 1, 83 So. 627; Cragin vs. Ocean, etc., Realty Company, 101 Fla. 1337, 135 So. 795; State vs. Cone, 140 Fla. 1, 191 So. 50). Statutes making tax liens paramount, in the absence of apt words expressing such intention, will not be construed retrospectively (71 C. J. 927, section 1178). There was no language in the parity act (chapter 12040, laws of Florida, acts of 1927) which admits of a retrospective construction for the operation of the act.

We, therefore, submit that, the lien of the total assessment of the drainage tax having attached in 1924 and 1926, the parity act of 1927 had no effect on it and did not raise the priority of such lien to a parity with state and county taxes. The lien remained an inferior lien to state and county taxes.

Subsequent tax priority laws.—Although it seems that the 1927 parity act had no effect upon the status of the lien of the drainage assessments and that they remained an inferior lien to state and county taxes; however, if we should, for the purpose of this argument, admit that the

1927 parity act affected a change in existing drainage assessments, it would then seem that section 1, chapter 14572, laws of Florida, acts of 1929 (also section 2, chapter 17442, laws of Florida, acts of 1935) would be in conflict with such parity act (they all being general laws), in that they provide that:

> All taxes imposed pursuant to the constitution and laws of this state *shall be a first lien superior to all other liens* on any property against which such taxes have been assessed which shall continue in full force and effect until discharged by payment (underscoring ours).

If the drainage lien is to be of equal dignity with the lien of taxes imposed by the constitution and laws of the state, then the lien for state and county taxes (provided for in the 1929 and 1935 acts) is not *superior to all other liens* upon the property assessed, because the drainage lien is another lien. It is impossible to harmonize a statute providing that taxes imposed pursuant to the constitution and laws of this state shall be *superior to all other liens* with a statute providing that drainage tax liens shall be of equal dignity with liens of state and county taxes. Drainage taxes are not taxes imposed pursuant to the constitution and laws of this state (Allison Realty Co. v. Graves Investment Co., 115 Fla. 48, 155 So. 745, text 750; Lainhart v. Catts, 73 Fla. 735, 75 So. 47, text 52) within the meaning of the above acts of 1929 and 1935. Special assessments for drainage benefits is a peculiar species of taxation distinct from the general burden imposed for state, county and municipal purposes (Lainhart v. Catts, supra).

We, therefore, submit that the parity act of 1927 was in conflict with the provisions of the 1929 and 1935 acts, making taxes imposed pursuant to the constitution and laws of this state first liens superior to all other liens, and was repealed by them as to such parity provision.

In conclusion, as to the second question, the lien of the drainage district for its assessments being inferior and subject to the lien of the state for state and county taxes such drainage liens were superseded by the state's title when it became absolute under the Murphy act.

Point 3.

The lien of the drainage district for its assessments against lands is inferior to the lien held by the State of Florida for State and County taxes levied against the same lands.

It has been shown, under the discussion of the preceding question, that the lien for state and county taxes is prior and superior to the lien of the drainage district for its assessments made in 1924 and 1926; this being true the current liens for state and county taxes are prior and superior to the said lien for drainage assessments.

Carlile vs. Melbourne-Tillman Drainage District, 143 Fla. 355, 196 So. 687; it may be contended by the respondents that this case is authority for their contention that the liens of drainage district assessments and state and county taxes are equal in dignity. Nowhere in the opinion does it appear when the state and county tax sale certificates were issued, whether before or after the establish-

ment of the drainage district, or before or after the enactment of the parity act; neither does it appear when the drainage district was established, whether before or after the enactment of the parity act of 1927, or whether it was established under the general laws or by special act.

The only holding in this case is that, on authority of Bice vs. City of Haines City, 142 Fla. 371, 195 So. 919, drainage liens were not discharged by the Murphy act. It is, therefore, necessary that we turn to the Bice case to determine the scope of the holding in this case. In the Bice case (195 So. text 925) the court said:

> It seems clear that as State and municipal tax liens are of equal dignity and as no tax liens and unpaid taxes of a municipality are included in a State tax sale certificate, and as municipal tax sale certificates or tax liens or unpaid taxes were not authorized to be sold under the Murphy Act, municipal tax sale certificates and tax liens legally existing upon the lands covered by the State tax sale certificates were not intended to be affected, and were not affected by the vesting of the title to the lands in the State without the right of redemption, by section 9 of Chapter 18296, *which Act does not terminate, cancel or annul municipal tax sale certificates or other evidences of municipal tax liens that are of equal dignity with State tax liens.* (Italics supplied).

It is evident, when the opinion in the Melbourne-Tillman case is read in connection with the Bice case, that the court *assumed*, without deciding the question of priority of liens, that the lien for drainage taxes, in the Melbourne-

Tillman case, was of equal dignity with the lien for state and county taxes. It is evident that, unless the drainage lien is of equal dignity with the state lien, it was eliminated by the vesture of title in the state under the Murphy act. This conclusion is further supported by the case of Sugar Bowl Drainage District vs. Miller, 120 Fla. 436, 162 So. 707, where it was held that state tax liens accruing before the formation of a drainage district were superior to such drainage district liens.

We, therefore, submit that the Supreme Court of Florida in the Melbourne-Tillman case, did not decide the question of the priority of liens contrary to the position of your petitioners in this cause.

Respectfully submitted,

J. TOM WATSON
Attorney General of Florida

WOODROW MELVIN

LAMAR WARREN

FRED M BURNS
Assistant Attorneys General

Attorneys for Petitioners